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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,503	12/26/2001	Michel J. Korwin	145-02 US	7871
25319	7590	03/24/2004	EXAMINER	
FREEDMAN & ASSOCIATES 117 CENTREPOINTE DRIVE SUITE 350 NEPEAN, ONTARIO, K2G 5X3 CANADA			KASTLER, SCOTT R	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/025,503	<b>Applicant(s)</b> KORWIN ET AL. <span style="float: right;">ed</span>	
	<b>Examiner</b> Scott Kastler	<b>Art Unit</b> 1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 26-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 32-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Claim Objections***

Claims 3, 4, 7-9, 11, 12, 15, 23 and 25 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The above claims are objected to as not properly further limiting the instant independent apparatus claims since the above claims recite only limitations dealing with the manner or method of use of the claimed apparatus (each of the above claims recite limitations dealing with the process conditions which are to be employed in the various chambers). It has been well settled that the manner or method of use of an apparatus cannot be relied upon to fairly further distinguish claims to the apparatus itself. See *In re Casey*, 152 USPQ 235 and MPEP 2114.

Claims 2 and 5 are objected to because of the following informalities: In the above claims, a "forth" processing cell is recited, it was assumed, for examination purposes, that this term was intended to be a "fourth" processing cell. Appropriate correction is requested.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-25 and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Pelisser. Pelisser teaches a multi-cell thermal processing unit (6) including an air tight expandable common chamber or chambers (10, 10') including a non-ambient atmosphere (the rarefied atmosphere of col. 1 line 35 for example), a loading cell (15) linked to the common chamber by a gas tight door (15-1), a number (N) ports on the common chamber (10), first, second and third processing cells (14, 14, 14') comprising heating and quenching (cooling) cells including heat insulating doors (see col. 2 line 40 for example) a transport mechanism (18,22) and air tight sealing covers (12,15-1 and 16-1), thereby showing all aspects of the above claims since the claims as presently written do not exclude vacuum furnaces as disclosed by Pelisser, which also contain non-ambient atmospheres.

Claims 1 and 6-25 and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Yokose et al. Yokose et al teaches a multi-cell thermal processing unit (see figs 1 and 2 for example) including an air tight common chamber(4) including a non-ambient atmosphere, a loading cell (2) linked to the common chamber by a gas tight door (3a), a number (N) ports on the common chamber (4), at least first, second and third processing cells (5a-5f, 6, 7 and 8) comprising heating and quenching (cooling) cells, a transport mechanism (12) and air tight sealing covers and heat insulating doors (3a-3j), thereby showing all aspects of the above claims.

***Response to Arguments***

Applicant's arguments filed on 1-27-2004 have been fully considered but they are not persuasive. Applicant's argument that claims 3, 7-9, 11, 12, 15, 23 and 25 are not properly limiting is not persuasive because the above claims as amended still recite no additional structural limitations to the claimed apparatus but only limitations dealing with the manner in which the claimed apparatus is to be employed (the type of treatment to be performed in a particular cell).

Applicant's further argument that all of the instant claims are not anticipated or obvious over the applied prior art because the applied prior art does not teach the step of employing the recited cells to supply "substantially fixed thermochemical processing conditions" is not persuasive because again, this is a limitation dealing with the manner or method in which the claimed apparatus is intended to be employed, and since the systems of both of Pelissier and Yokose et al could be employed in this manner, even though this method of use may not be specifically taught by either of Pelissier or Yokose et al, the applied references meet the requirements of the above claims since it has been well settled that the manner or method of use of an apparatus cannot be relied upon to fairly further limit claims to the apparatus itself. See *In re Casey*, 152 USPQ 235 and MPEP 2114.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (571) 272-1243. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Scott Kastler  
Primary Examiner  
Art Unit 1742

sk